
IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA

BETWEEN

ATTORNEY-GENERAL

Appellant

AND

RYAN YARDLEY

First respondent

AND

JOSHUA WALLACE

Second respondent

AND

DEFENCE FORCE WORKER

Third respondent

NOTICE OF APPEAL

25 March 2022



**Te Tari Ture
o te Karauna**
Crown Law

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To the Registrar of the Court of Appeal

The appellant, the Attorney-General in the proceeding identified above, gives notice that he is appealing to the court against the judgment of the High Court dated 25 February 2022 in *Yardley & ors v Minister for Workplace Relations and Safety & ors* [2022] NZHC 291.

Grounds of appeal

1. The High Court erred in failing to apply the precautionary principle/margin of appreciation in its s 5 NZBORA assessment (despite at [94] acknowledging the concept).
2. This failure led the Court into further error in failing to consider the information that was available to the Minister at the time the Order was made.
3. The Court failed to consider the mandatory review of the order, to be undertaken by the Minister.
4. Instead, the High Court established for itself the practical questions it said needed to be answered at the time of hearing. In doing so the Court erred in:
 - 4.1 Undertaking the policy analysis for itself and reaching its own determination on conflicting affidavit expert evidence.
 - 4.2 Finding the respondents had failed to adduce evidence of a hypothetical counterfactual as to how many Police and New Zealand Defence Force employees/members would have been vaccinated if the Order had not been made and/or whether the Order was the reason for which those individuals had been vaccinated; such evidence being speculative information that was not available to the respondents.
 - 4.3 Finding that the relevant number of affected staff was the number that remained unvaccinated at the time of the hearing, rather than at the time the Order was made.

Judgment Sought

The appellant seeks the Court of Appeal to allow the appeal by granting a declaration to the appellant. The appellant acknowledges that, if the appeal succeeds, the Order will not be reinstated as it has been revoked pursuant to s 16 of the COVID-19 Public Health Response Act 2020.

25 March 2022



V McCall
Counsel for the appellant

TO: The Registrar of the Court of Appeal of New Zealand.

AND TO: The respondents.

This document is filed by Vicki McCall, solicitor for the appellant, of Crown Law.

The address for service of the appellant is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the appellant may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (c) emailed to the solicitor at vicki.mccall@crownlaw.govt.nz provided that the documents are also emailed to abbey.lawson@crownlaw.govt.nz.